

No. 13-20-00140-CV

In the Thirteenth Court of Appeals
Edinburg, Texas

FILED IN
13th COURT OF APPEALS
CORPUS CHRISTI/EDINBURG, TEXAS
10/2/2020 9:44:30 AM
KATHY S. MILLS
Clerk

Ricardo Maldonado Davila,
Appellant

V.

M & M Towing and Recovery, Inc.,

Appellee/Cross-Appellant

APPEAL FROM JUDGMENT IN CAUSE NO. C-0227-18-G
COUNTY COURT AT LAW NO. 4 OF HIDALGO COUNTY, TEXAS
HON. FRED GARZA PRESIDING

**SECOND AMENDED APPELLEE’S AND CROSS-APPELLANT’S BRIEF
WITH APPENDIX**

John David Franz
State Bar No. 07389200
Fed I.D. 1190
400 N. McColl, Suite B
McAllen, Texas 78501
(956) 686-3300
(956) 686-3578 (Fax)
jdf@johndavidfranz.com

TABLE OF CONTENTS.....	ii
RECORD AND PARTY REFERENCES.....	iv
TABLE OF AUTHORITIES.....	v
I. STATEMENT OF THE CASE.....	1
II. STATEMENT REGARDING ORAL ARGUMENT.....	2
III. STATEMENT OF THE ISSUES PRESENTED ON APPEAL.....	2
IV. STATEMENT OF ISSUE PRESENTED ON CROSS- APPEAL.....	2
V. STATEMENT OF THE FACTS.....	2
A. APPELLANT FAILED TO FILE A REPORTER’S RECORD.....	2
B. APPELLANT FILED APPLICATIONS FOR TOW HEARINGS PURSUANT TO TEXAS OCCUPATIONS CODE §2308.456.....	3
C. APPELLANT SOUGHT JUDGMENT PURSUANT TO TEXAS OCCUPATIONS CODE §2308.456.....	4
D. TRIAL COURT RULED APPELLANT HAD WAIVED RIGHT TO TOW HEARINGS.....	5
E. TRIAL COURT RULED THAT RESPONSIBLE THIRD PARTY HAD PROBABLE CAUSE TO REMOVE VEHICLES FROM PROPERTY.....	6
F. TRIAL COURT RULED THAT APPELLEE WAS THE PREVAILING PARTY.....	7
G. APPELLEE PRESENTED UNCONTROVERTED EVIDENCE WITHOUT OBJECTION OF \$22,590.00 REASONABLE AND NECESSARY ATTORNEY’S FEES.....	7
H. TRIAL COURT FOUND APPELLANT LIABLE TO APPELLEE FOR REASONABLE AND NECESSARY ATTORNEY’S FEES.....	8
I. TRIAL COURT AWARDED APPELLEE \$0 FOR REASONABLE AND NECESSARY ATTORNEY’S FEES.....	8
J. TRIAL COURT AWARDED APPELLEE \$10,000 FOR REASONABLE AND NECESSARY ATTORNEY’S	

FEES IN THE EVENT OF AN UNSUCCESSFUL APPEAL BY APPELLANT.....	8
VI. SUMMARY OF THE ARGUMENT.....	8
VII. APPELLEE’S ARGUMENT.....	10
A. ABUSE OF DISCRETION IS STANDARD OF REVIEW.....	10
B. APPELLANT INVOKED PROVISIONS OF TEXAS OCCUPATIONS CODE §2308.....	11
C. STATUTE REQUIRES REQUEST FOR HEARING WITHIN 14 DAYS OF REMOVAL OF VEHICLE.....	12
D. APPELLANT DID NOT TIMELY FILE REQUESTS FOR TOW HEARINGS.....	13
E. APPELLEE WAS DIRECTED BY RESPONSIBLE THIRD PARTY TO REMOVE THE VEHICLES.....	13
F. TRIAL COURT WAS CORRECT IN FINDING PROBABLE CAUSE EXISTED FOR THE REMOVAL OF THE VEHICLES.....	14
VIII. APPELLEE/CROSS APPELLANT’S ARGUMENT.....	14
A. APPELLEE/CROSS APPELLANT WAS THE PREVAILING PARTY AT TRIAL.....	14
B. TEXAS OCCUPATIONS CODE SECTION 2308 PROVIDES FOR AN AWARD OF ATTORNEY’S FEES TO THE PREVAILLING PARTY.....	15
C. APPELLEE PRESENTED UNCONTROVERTED EVIDENCE OF ATTORNEY’S FEES INCURRED IN DEFENDING THE ACTION.....	16
D. COURT COMMITTED REVERSIBLE ERROR BY AWARDING \$0 TO APPELLEE/CROSS APPELLANT FOR REASONABLE AND NECESSARY ATTORNEY’S FEES.....	17
E. CONCLUSION AND PRAYER.....	19
CERTIFICATE OF SERVICE.....	20
CERTIFICATE OF COMPLIANCE.....	20
APPENDIX.....	21

RECORD AND PARTY REFERENCES

The Clerks's Record will be cited by the abbreviation "CR" followed by page numbers.

Appellant Ricardo Manuel Davila will be referred to as "Appellant" in portions of the Appellee's brief and as Cross-Appellee in others.

Appellee M & M Towing and Recovery, Inc. will be referred to as "Appellee" in portions of the Appellee's brief and as Cross-Appellant in others.

TABLE OF AUTHORITIES

CASES

<i>Butnaru v. Ford Motor Co.</i> , 84 S.W.3d 198, 204 (Tex. 2002).....	10
<i>HMS Holdings Corp. v. Pub. Consulting Group, Inc.</i> , 05-15-00925-CV, 2016 WL 1179436, (Tex. App.—Dallas Mar. 28, 2016) (unpublished).....	10
<i>Salazar v. Gallardo</i> , 57 S.W.3d 629, 632 (Tex. App.—Corpus Christi 2001).....	11
<i>Manderschied v. Laz Parking of Texas LLC</i> , 506 S.W.3d 521 (Tex Civ App -- Hou 1 st Dist, 2017.....	12
<i>Ragsdale v. Progressive Voters League</i> , 801 S.W.2d 880, 881–82 (Tex.1990).....	16,17
<i>Grace v. Duke</i> , 54 S.W.3d 338, 344 (Tex.App.-Austin 2001, no pet.).....	18
<i>Goode v. Shoukfeh</i> , 943 S.W.2d 441, 446 (Tex.1997).....	17
<i>City of Sherman v. Henry</i> , 928 S.W.2d 464, 474 (Tex. 1996).....	15
<i>Bruni v. Bruni</i> , 924 S.W.2d 366, 368 (Tex. 1996).....	15
<i>D.F.W. Christian Television, Inc. v. Thornton</i> , 933 S.W.2d 488, 490 (Tex.1996).....	15
<i>Arthur Andersen & Co. v. Perry Equipment Corp.</i> , 945 S.W.2d 812, 818 (Tex. 1997).....	15

Beaumont Bank v. Buller,

806 S.W.2d 223, 226 (Tex.1991).....17

STATUTES

Tex. Occ. Code Ann. 2308.452.....12

Tex. Occ. Code Ann. 2308.456.....3,12

Tex. Occ. Code Ann. 2308.458.....15

I. STATEMENT OF THE CASE

Crisoforo Maldonado, Jr. (“Maldonado”) possessed an ownership interest in property located at 2280 E. Rogers Road in Edinburg, Texas. Maldonado directed Appellee to remove four vehicles from the property on October 23, 2018. Appellee moved the vehicles and stored them at Appellee’s licensed vehicle storage facility in Edinburg, Texas. Appellant filed four separate “*untimely*” requests for tow hearings in a Hidalgo County Justice of the Peace Court pursuant to Chapter 2308, Subchapter J of the Texas Towing and Booting Act. The Hidalgo County Justice Court, Precinct 4 Place 1, entered judgment in favor of Appellee in all four cases. Appellant appealed to Hidalgo County Court at Law No. 4. Maldonado was designated as a Responsible Third Party. Following a bench trial, the Court entered Judgment in favor of Appellee with regard to all four vehicles. The Trial Court found Appellant liable to Appellee for reasonable and necessary attorney’s fees and awarded \$0 to Appellee for reasonable and necessary attorney’s fees. Appellee files a Counter Appeal requesting that the Court affirm the judgment finding that Appellee was the prevailing party and that the Court reverse the portion of the judgement finding that Appellee is entitled to \$0 for reasonable and necessary attorney’s fees as the prevailing party. Cross-Appellant seeks a rendition of judgement for \$22,590.00 to Appellee/Cross-Appellant for reasonable and necessary attorney’s fees.

II. STATEMENT REGARDING ORAL ARGUMENT

Appellee does not agree that the Court would benefit from oral argument.

III. STATEMENT OF THE ISSUE PRESENTED ON APPEAL.

Whether the trial Court abused its discretion by entering judgment in favor of Appellee on February 20, 2020.

IV. STATEMENT OF ISSUE PRESENTED ON CROSS-APPEAL

Whether the trial court abused its discretion by awarding \$0 for attorney's fees to Appellee as the prevailing party.

V. STATEMENT OF THE FACTS

A. REPORTER'S RECORD NOT FILED

Appellant failed to file a Reporter's Record of the trial. The Court advised Appellant that the Court was going to consider and decide those issues or points that do not require a reporter's record for a decision. As a consequence of Appellant's failure, the Reporter's Record has not been filed and the Court cannot consider any issues regarding the legal sufficiency of evidence to support the trial court's judgment. The judgment contains the following "*After considering the pleadings on file, the evidence presented and admitted by the Court and the arguments of counsel, the Court finds for Defendant M & M Towing and against Plaintiff Davila*". CR 281. Because Appellant has failed to file the Reporter's Record, the Court may be unable to determine what evidence the trial court considered in entering the judgment against Appellant. With regard to the Cross- Appeal, evidence to support a reversal of the trial court's decision on the amount of attorney's fees awarded is

present in the form of Exhibit 39 in the Clerk's Record and a copy of which is made a part of the Appellee's Appendix.

**B. APPELLANT FILED APPLICATIONS FOR TOW
HEARINGS PURSUANT TO TEXAS OCCUPATIONS
CODE §2308.456**

Appellant filed four separate applications for tow hearings pursuant to Texas Occupation Code Section 2308. Cause No. Pct 19-0186 was filed in Justice of the Peace Precinct 4 Place 1 on June 13, 2019. CR 54,55. Cause No. Pct 19-0187 was filed in Justice of the Peace Precinct 4 Place 1 on June 13, 2019. CR 56, 57. Cause No. Pct 19-0188 was filed in Justice of the Peace Precinct 4 Place 1 on June 13, 2019. CR 58,59. Cause No. Pct 19-0189 was filed in Justice of the Peace Precinct 4 Place 1 on June 13, 2019. CR 60,61.

Appellant's sole request in each of the four cases was a hearing pursuant to Texas Occupations Code Section 2308.456 as shown set out in the capitalized and bold type heading at the top of each of the filings. CR 54-61. Reference to Texas Occupations Code Section 2308 is clearly set forth in each of the requests for tow hearings on the captions at the top of each of the requests.

**C. APPELLANT SOUGHT JUDGMENT PURSUANT TO
TEXAS OCCUPATIONS CODE §2308**

Appellant invoked the jurisdiction of the Court to seek redress pursuant to Texas Occupations Code Section 2308 by proposing a judgment that contained language stating “*The Court considered the Applications for Tow Hearings in each of the four cases, de novo*”. CR 228. Appellant further requested findings by the Court that “*Owners or operators of the four vehicles described above did not waive their rights to Tow Hearings by not filing applications for tow hearings within 14 days of the removal of vehicles...*” CR 229. Appellant also requested that the Court find that “*Crisoforo Maldonado, Jr. was not authorized, with probable cause, to order the removal of the four vehicles...*” CR 229.

In a trial memorandum filed with the Court, Appellant claimed entitlement to a hearing under Chapter 2308, subchapter J of the Texas Towing and Booting Act, entitled “Rights of Owners and Operators of Stored or Booted Vehicles”. CR233. Appellant specifically claimed in Section 3.3 of his trial memorandum that the issues to be addressed were whether probable cause existed for the removal of vehicles and whether the towing charges were statutorily authorized. CR233.

D. TRIAL COURT RULED APPELLANT HAD WAIVED RIGHT TO TOW HEARINGS

The trial court's judgement declares that the owners of the four vehicles waived their rights to tow hearings by not filing applications for tow hearings within 14 days of the removal of the vehicles from the property. CR 282.

Appellant was aware that the vehicles had been moved to Appellee's vehicle storage facility on October 23, 2018. CR 268. Appellant, in Section 4.1 to his Response to a Trial Memorandum filed by Appellee, admits that the four vehicles were removed from the property on October 23, 2018. CR234, 235.

Appellant does not possess a file stamped justice of the peace court document proving that a written request for a town hearing was filed within fourteen days of the date the motor vehicles were removed from the Rogers Road property. This fact is established by Appellant's response to Request for Admission No. 15. CR 269.

Appellant did not file his requests for tow hearings in a Justice of the Peace Court until June 13, 2019. CR 56. The filing date was months after the fourteen-day time period required by Chapter 2308, Subchapter J of the Texas Towing and Booting Act had expired.

**E. TRIAL COURT RULED THAT RESPONSIBLE THIRD
PARTY HAD PROBABLE CAUSE TO REMOVE
VEHICLES FROM PROPERTY**

The trial court designated Crisoforo Maldonado, Jr. as a responsible third party. CR215. The trial court's judgment declared that Maldonado had probable cause to order the removal of the four vehicles. CR 282. The Court further found that Crisoforo Maldonado, Jr. possessed an ownership interest in the property described as 8820 E. Rogers Road, Edinburg, Texas on October 23, 2018. CR 282. Appellant alleged and admitted that the removal of the vehicles was authorized by Maldonado in his pleadings. CR56,57. Appellant admitted in response to Request for Admission No. 5 that Maldonado ordered the removal of the motor vehicles from property located at 8820 Rogers Road, Edinburg, Texas. CR268.

The trial court further found that Appellee's action in removing the four vehicles from Crisoforo Maldonado, Jr.'s property on October 23, 2018 was reasonable and based on probable cause due to a presentation by Crisoforo Maldonado, Jr. of a Texas Driver's license showing his residence to be 8820 E. Rogers Road, Edinburg, Texas 78541, signage at the entrance to the property indicating that the private entrance was owned or controlled by "Maldonado" and a street sign at the entrance to the property designating the private drive as "C. Maldonado Drive." CR 283.

F. TRIAL COURT RULED THAT APPELLEE WAS THE PREVAILING PARTY

The Court entered judgment that Appellee was a prevailing party by stating “The Court finds that M & M Towing is a prevailing party...” CR 284. The Judgement further provides “*the Court finds that an award of attorney’s fees and court costs is proper to compensate M & M Towing for legal services and costs associated in defending against the claims of Ricardo Davila.*” CR 284.

G. APPELLEE PRESENTED UNCONTROVERTED EVIDENCE WITHOUT OBJECTION OF \$22,590.00 REASONABLE AND NECESSARY ATTORNEY’S FEES

The court admitted Exhibit 39, without objection, as evidence of reasonable and necessary attorney’s fees incurred by Appellee in defense of Appellant’s claims. Exhibit 39 is an eleven page exhibit containing an affidavit by Appellee’s attorney, John David Franz, along with exhibits to the affidavit. CR 361-371. The affidavit contains time records and descriptions of the legal services performed as evidence in support of Appellant’s claim for attorney’s fees. A statement that \$22,590.00 in attorney’s fees were reasonable and necessary to litigate the case for Appellee through the trial of the cases in both the Justice Court and County Court at Law appears in the affidavit. CR 361-371.

H. TRIAL COURT FOUND APPELLANT LIABLE TO APPELLEE FOR REASONABLE AND NECESSARY ATTORNEY'S FEES

The trial court found that Appellant was liable to Appellee for all costs of Court and for reasonable and necessary services of the attorney employed by Appellee. CR 282.

I. TRIAL COURT AWARDED \$0 TO APPELLEE FOR REASONABLE AND NECESSARY ATTORNEY'S FEES

For representation in the trial court, the trial court entered \$0 as the amount Appellee should be awarded. CR 284.

J. TRIAL COURT AWARDED APPELLEE \$10,000 FOR REASONABLE AND NECESSARY ATTORNEY'S FEES IN THE EVENT OF AN UNSUCCESSFUL APPEAL BY APPELLANT

For representation through appeal to the court of appeals, the trial court entered \$10,000.00 as the amount Appellee should be awarded. CR 284.

VI. SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in rendering judgment in favor of Appellee and against Appellant based on Texas Occupations Code Section 2308.001 *et. seq.* because Appellant pled entitlement to relief pursuant to the statute and Appellant tried his case based on the statute. Appellant is estopped from claiming the statute should not have been applied to the facts of this case since he is the one who invoked the provisions of the statute. Appellant now claims

that judgement should be vacated due to inapplicability of the very statute he invoked. Appellant was granted tow hearings on each of the four vehicles and attempted to prove in two separate court proceedings, that the removal of the vehicles by Appellee was not based on probable cause. The Justice of the Peace Precint 4, Place 1 Court and Hidalgo County Court at Law No. 4 both found for Appellee and against Appellant. After losing in two separate cases where at Appellant's request, different Courts considered Appellant's claims based on Texas Occupations Code Section 2308, Appellant now wishes to vacate the adverse judgement by saying the statute should not have been applied by the Court. It was Appellant's burden to submit issues to the Court under applicable law and he chose to proceed under the provisions of Texas Occupations Code Section 2308. Appellant should not be allowed to complain that he incorrectly sought relief under a statute that did not apply.

Appellant waived his right to relief afforded under Texas Occupations Code Section 2308.001 *et. seq.* by not making a timely request for hearing and alternatively, if Appellant did not waive his rights under the statute, the Court correctly determined that probable cause existed for the removal of the vehicles. As such, Appellee was a prevailing party. On Cross-Appeal, Appellee/Cross-Appellant asserts that the trial court abused its discretion by finding that Appellant was liable to Appellee for reasonable and necessary attorney's fees and then awarding \$0 for

Appellee-Cross-Appellant's reasonable and necessary attorney's fees. Awarding \$0 for reasonable and necessary attorney's fees to a prevailing party after competent evidence was presented is an abuse of discretion. Appellant did not object to and did not controvert evidence of the reasonableness and necessity of attorney's fees incurred by Appellee. The Court should affirm the trial court's judgement in all respects with the exception of reversing the trial court's judgment that \$0 should be awarded to Appellee. The Court should render judgement for \$22,590.00 to Appellee and against Appellant for reasonable and necessary attorney's fees incurred by Appellee through the trial of the case. An additional \$10,000.00 should be awarded to Appellee for reasonable and necessary attorney's fees through this appeal as set out in the trial court's judgment.

VII. ARGUMENT

A. ABUSE OF DISCRETION IS STANDARD OF REVIEW

The Judgment may only be reversed if the trial court abused its discretion. *See Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Indeed, a reviewing court must "view the evidence in the light most favorable to the trial court's order, indulging every reasonable inference in its favor." *HMS Holdings Corp. v. Pub. Consulting Group, Inc.*, 05-15-00925-CV, 2016 WL 1179436, at *1 (Tex. App.—Dallas Mar. 28, 2016) (unpublished). This means that the Court need only look for some evidence that supports Appellee's claim *in support of waiver and*

probable cause for removal even if there is conflicting evidence. Salazar v. Gallardo, 57 S.W.3d 629, 632 (Tex. App.—Corpus Christi 2001) (“There is no abuse of discretion where the court bases its decision on conflicting evidence.”). The trial court did not abuse its discretion as ample evidence in the Clerk’s record supports a judgment that Appellant waived his right to a tow hearing and that there was probable cause for the removal of the four vehicles from the property described as 8820 E. Rogers Road, Edinburg, Texas.

**B. APPELLANT INVOKED PROVISIONS OF TEXAS
OCCUPATIONS CODE §2308**

Appellant petitioned the Hidalgo County Justice Court and the Hidalgo County Court at Law No. 4 for “Tow Hearings” pursuant to Texas Occupations Code Section 2308.486 as evidenced by the four applications for tow hearings filed on June 13, 2019 as CR 56 through CR 61. Appellant made reference to Texas Occupations Code Section 2308 in his response to Appellee’s Trial Memorandum filed as CR234,235. The case was tried before Judge Fred Garza as a tow hearing based on Texas Occupations Code 2308 and the Court rendered judgment by applying the facts to the statutory provisions. After invoking the statute and petitioning the trial court to hear his claims based on the statute, Appellant is estopped from arguing that the Court incorrectly invoked provisions in Texas Occupations Code Section 2308.

C. STATUTE REQUIRES REQUEST FOR HEARING WITHIN 14 DAYS OF REMOVAL OF VEHICLE

Texas Occupations Code Section 2308.456 requires that an owner or operator request a hearing with a justice of the peace within fourteen days after the date the vehicle was removed and placed in a storage facility. The purpose of Chapter 2308 is to establish a quick process (hearing request within 14 days of removal and hearing within 21 days of request of hearing) by which to adjudicate a protest by a party whose car was towed, either for lack of probable cause or for the imposition or collection of excessive charges in connection with the tow. Tex. Occ. Code Ann. 2308.452, *Manderschied v. Laz Parking of Texas LLC*, 506 S.W.3d 521, 523 (Tex Civ App -- Hou 1st Dist, 2017).

The statute is clear in requiring that an application be filed within fourteen days of removal.

Sec. 2308.456. REQUEST FOR HEARING.

(a) Except as provided by Subsections (c) and (c-1), a person entitled to a hearing under this chapter must deliver a written request for the hearing to the court before the 14th day after the date the vehicle was removed and placed in the vehicle storage facility or booted, excluding Saturdays, Sundays, and legal holidays.

The uncontroverted evidence is that the applications for tow hearings were not delivered to the justice court within fourteen days of the vehicle's removal.

D. APPELLANT DID NOT TIMELY FILE REQUESTS FOR TOW HEARINGS

The record is clear that the vehicles were removed on October 23, 2019 from third party defendant's property and the requests for hearing were not filed until June 13, 2019. The filing of the requests for hearing did not take place within fourteen (14) days as the statute requires. In fact, the filings did not take place until 233 days later. As such, Appellant did not timely file his request for tow hearings and cannot invoke the provisions of Texas Occupations Code Section 2308.001 *et. seq.*

E. APPELLEE WAS DIRECTED BY RESPONSIBLE THIRD PARTY TO REMOVE THE VEHICLES

The Clerk's Record makes clear that Maldonado was designated as a responsible third party. CR 215. Appellant did not make claim against Maldonado. There is evidence in the Clerk's Record that Crisoforo Maldonado, Jr. possessed an ownership interest in the property described as 8820 E. Rogers Road, Edinburg, Texas where the vehicles were located on October 23, 2018. CR 282. Appellant alleged and admitted that the removal of the vehicles was authorized by Crisoforo Maldonado, Jr. in his pleadings. CR56,57. Appellant admitted in response to Request for Admission No. 5 that Crisoforo Maldonado, Jr. ordered the removal of the motor vehicles from property located at 8820 Rogers Road, Edinburg, Texas. CR268. The trial court found that Appellee's action in removing

the four vehicles from Crisoforo Maldonado, Jr.'s property on October 23, 2018 was reasonable and based on probable cause due to a presentation by Crisoforo Maldonado, Jr. of a Texas Driver's license showing his residence to be 8820 E. Rogers Road, Edinburg, Texas 78541, signage at the entrance to the property indicating that the private entrance was owned or controlled by "Maldonado" and a street sign at the entrance to the property designating the private drive as "C. Maldonado Drive." CR 283.

F. TRIAL COURT WAS CORRECT IN FINDING PROBABLE CAUSE EXISTED FOR THE REMOVAL OF THE VEHICLES

There is ample evidence in the Clerk's Record to support the Court's judgment on the issue of whether there was probable cause to remove the vehicles from the Maldonado property.

VIII. APPELLEE/CROSS APPELLANT'S ARGUMENT

A. APPELLEE/CROSS APPELLANT WAS THE PREVAILING PARTY AT TRIAL

The trial court's judgment that Appellee was a prevailing party is supported by evidence in the Clerk's Record. The Court in its judgment declared "Davila is liable to M & M Towing for all costs of court and for reasonable and necessary services of the attorney employed by M & M Towing and the Court adjudges Davila liable for the following:" CR 284. Once the Court determined that Appellant was liable to Appellee for reasonable and

necessary attorney's fees, it was incumbent on the trial court to make a reasonable award.

**B. TEXAS OCCUPATIONS CODE SECTION 2308
PROVIDES FOR AN AWARD OF ATTORNEY'S FEES
TO THE PREVAILING PARTY**

Texas Occupations Code Section 2308.458 (e) (1) permits the trial court to award costs and attorney's fees to the prevailing party. The Court was authorized to award reasonable and necessary attorney's fees to Appellee under this section of the Texas Occupations Code. The statute provides that the Court "may" award attorney's fees to the prevailing party. The same is true of other statutes that provide that a court "may" award attorney fees. *E.g. City of Sherman v. Henry*, 928 S.W.2d 464, 474 (Tex.1996) (applying TEX. LOC. GOV'T CODE § 143.015(c)); *Bruni v. Bruni*, 924 S.W.2d 366, 368 (Tex.1996) (reviewing fees in suits affecting the parent-child relationship under former TEX. FAM.CODE § 11.18(a), recodified as § 106.002). Statutes providing that a party "may recover", "shall be awarded", or "is entitled to" attorney fees are not discretionary. *E.g., D.F.W. Christian Television, Inc. v. Thornton*, 933 S.W.2d 488, 490 (Tex.1996) (applying TEX. CIV. PRAC. & REM.CODE § 38.001(8)); *Arthur Andersen & Co. v. Perry Equipment Corp.*, 945 S.W.2d

812, 818 (Tex.1997) (discussing “reasonable and necessary attorneys' fees” under TEX. BUS. & COM.CODE § 17.50(d)); *Ragsdale v. Progressive Voters League*, 790 S.W.2d 77, 86 (Tex.App.—Dallas 1990), *aff'd in part and rev'd in part on other grounds*, 801 S.W.2d 880 (Tex.1990)(applying former TEX. ELEC.CODE § 251.008, recodified as § 253.131).

**C. APPELLEE PRESENTED UNCONTROVERTED
EVIDENCE OF ATTORNEY’S FEES INCURRED IN
DEFENDING THE ACTION.....**

The Court admitted Exhibit 39 as evidence in the case. No objection was made to Appellee’s offer. (CR 361-371). Exhibit 39 consists of a three-page affidavit by attorney John David Franz which sets forth sworn statements regarding his qualification to render an opinion on what constitutes a reasonable and necessary attorney’s fee in a case like the the one at bar. The affidavit contains sworn statements regarding experience and knowledge regarding reasonable and necessary attorney’s fees that are customarily charged by attorneys in Hidalgo County, Texas for civil matters similar to those set forth in his case. Exhibit 39 contained an Exhibit A consisting of detailed records documenting dates of legal services, time spent and legal services provided to Appellee in defense of Appellant’s claims. The uncontroverted evidence consisted of a sworn statement that

Appellee's counsel had spent 75.3 hours over the course of several months and several proceedings before both a Justice of the Peace and a Hidalgo County Court at Law Judge, including the consolidation of four separate appeals. The rate charged was \$300.00 per hour and this rate is reasonable for an attorney with over thirty-five years of civil trial experience in Hidalgo County, Texas.

**D. COURT COMMITTED REVERSIBLE ERROR BY
AWARDING \$0 TO APPELLEE/CROSS APPELLANT
FOR REASONABLE AND NECESSARY ATTORNEY'S
FEES**

The Texas Supreme Court has ruled that it is an abuse of discretion for a trial court to rule arbitrarily, unreasonably, or without regard to guiding legal principles, *e.g.*, *Goode v. Shoukfeh*, 943 S.W.2d 441, 446 (Tex.1997), or to rule without supporting evidence, *Beaumont Bank v. Buller*, 806 S.W.2d 223, 226 (Tex.1991). Therefore, in reviewing an attorney fee award under the Act, the court of appeals must determine whether the trial court abused its discretion by awarding fees when there was insufficient evidence that the fees were reasonable and necessary, **or when the award was inequitable or unjust.** *emphasis added*. What constitutes reasonable attorney's fees is a question of fact, but clear, direct, and uncontroverted evidence of attorney's fees is taken as true as a matter of law, especially when the opposing party has not rebutted the evidence. *Ragsdale v.*

Progressive Voters League, 801 S.W.2d 880, 881–82 (Tex.1990); *Grace v. Duke*, 54 S.W.3d 338, 344 (Tex.App.-Austin 2001, no_pet.). The uncontroverted evidence of 75.3 hours spent in defense of claims made by Appellant in proceedings in both the Justice of the Peace and the Hidalgo County Court at Law should be taken as true as a matter of law and as provided by Texas law. Appellant did not question or controvert Appellee's claims of time spent by its attorney in defending against Appellant's claims. The rate of \$300 per hour should be accepted as a reasonable hourly fee for an attorney with over thirty-five years of civil litigation experience. Appellant did not contest the reasonableness of the rate for an attorney working on the defense of claims as asserted in this case. The Court should render judgment that Appellee be awarded its reasonable and necessary attorney's fees based on 75.3 hours spent by Appellee's counsel in defense of Appellant's claims at a rate of \$300 per hour. An award of \$0 for the time and effort expended in behalf of the prevailing Appellee through two separate court battles is inequitable and unjust and constitutes an abuse of discretion after the trial court determined that Appellee was entitled to recover reasonable and necessary attorney's fees.

E. CONCLUSION AND PRAYER

The Court should affirm the trial court's judgment in part and should reverse in part and render judgement for Appellee. Appellee requests that this Court: (1) affirm the trial court's judgment that Appellant waived his right to a tow hearing; (2) affirm the trial court's judgment that probable cause existed for the removal of the four vehicles; (3) affirm the trial court's judgment that Appellee was the prevailing party; (4) reverse that portion of the judgment stating that M & M should be awarded \$0 for costs of court and reasonable and necessary services of its attorney for representation in the trial court(s); and (5) render judgment that Appellant is liable to Appellee for court costs and attorney's fees in the amount of \$23,590.00 for services in the trial court and \$10,000 for attorney's fees for this appeal.

Respectfully submitted,

Law Offices of John David Franz

By: /s/ John David Franz

John David Franz

State Bar No. 07389200

Fed I.D. 1190

400 N. McColl, Suite B

McAllen, Texas 78501

(956) 686-3300

(956) 686-3578 (Fax)

Attorney for APPELLEE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 2, 2020, the foregoing First Amended Appellee's/Counter-Appellant's Brief was electronically transmitted to the Clerk's Office using the Efile system for filing and service via transmittal of a Notice of Electronic Filing to the following registrants. All parties will be served in accordance with the Texas Rules of Civil Procedure.

Raul Acevedo
Acevedo Law Firm
5717 N. 10th St., Suite D
McAllen, TX 78504

E-filing

/s/ John David Franz
John David Franz

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.4(i)(3), Texas Rules of Appellate Procedure, the undersigned counsel certifies that according to the Microsoft Word word count function, this brief contains 4,029 words excluding the caption, Statement regarding Oral Argument, Tables of Contents, Table of Authorities, Statement of the Case, Statement of Issues Presented, Signature, Certificate of Service, this Certificate of Compliance, and appendix.

RESPECTFULLY SUBMITTED:

/s/ John David Franz
John David Franz

APPENDIX

Trial Court Judgment CR280-285

Appellant's Responses to Requests for Admission CR336-350

Exhibit 39 Admitted as Evidence CR361-371

Tex. Occ. Code Ann. 2308.452

Tex. Occ. Code Ann. 2308.456

Tex. Occ. Code Ann. 2308.458

CL-19-5371-D

RICARDO MALDONADO DAVILA	§	IN THE COUNTY COURT
	§	
	§	
VS.	§	AT LAW NO. 4
	§	
M & M TOWING AND RECOVERY,	§	
INC.	§	HIDALGO COUNTY, TEXAS

JUDGMENT ON APPLICATIONS FOR TOW HEARING

On the 29th day of January, 2020, came for hearing the Four (4) Applications for Tow Hearings filed on June 13, 2019 by Ricardo Maldonado Davila (“Davila”) in a Hidalgo County Justice of the Peace Court. The Court considered the appeals of four judgments from a Justice of the Peace Court where the Justice Court ruled that owners or operators of the four vehicles had waived their rights to the four tow hearings by failing to comply with V.T.C.A., Occupations Code §2308.456 (a) and (d) on the following described vehicles:

1. 1956 Chevrolet Bel Air; VIN# VC56J0036528;
2. 1969 Red Ford Mustang; License No. SSV47S; VIN# 9R02H102192;
3. 2016 Suzuki CLS Motorcycle; License No. 715U3C, VIN # JS1VY53A0G2100043;
4. 1970 Yellow Ford Mustang, Mach 1 with no identifying VIN#.

The Court considered the Applications for Tow Hearings in each of the four cases, *de novo*.

Prior to the commencement of the final hearing, the Court designated Crisoforo Maldonado, Jr. as a responsible third party pursuant to Section 33.004 of the Texas Civil Practices and Remedies Code at the request of Defendant M & M Towing. Plaintiff Ricardo

Davila appeared by and through his counsel, Raul Acevedo. Defendant M & M Towing and Recovery, Inc. (“M & M Towing”) appeared by and through its counsel, John David Franz. A final hearing ensued and all matters were presented to the Court for adjudication. After considering the pleadings on file, the evidence presented and admitted by the Court and the arguments of counsel, the Court finds for Defendant M & M Towing and against Plaintiff Davila. The Court makes the following findings:

WAIVER

Owners or operators of the four vehicles described above waived their rights to Tow Hearings by not filing applications for tow hearings within 14 days of the removal of vehicles from 8820 E. Rogers Road, Edinburg, Texas (the “property”) and waiting 233 days until June 13, 2019 to file applications for tow hearings on each of the four vehicles described above.

The purpose of V.T.C.A., Occupations Code §2308.456(a) is to require applicants to protest a towing within 14 days of a vehicle’s removal so that the controversy can be adjudicated quickly and economically. A justice court is required to hold the hearing within 21 days of the hearing request. With regard to the four vehicles described herein, the owners and/or operators failed to file an application for hearing within 14 days of October 23, 2018, the date M & M Towing removed the four vehicles from the property. Plaintiff Davila was aware on October 23, 2018 that the four vehicles had been removed by M & M Towing from the property and were in the possession of M & M Towing at the M & M Towing and Recovery lot located at 1406 S. McColl, Edinburg, Texas. Davila admitted he was aware the four vehicles were at M & M Towing as of October 23, 2018. The Court is of the opinion that it has jurisdiction to consider the appeals of Davila even though the applications were not timely filed; however, the Court does find that Davila and the owners or operators of the four vehicles waived their right to tow

hearings for each of the vehicles described herein by delaying more than seven months from the time the vehicles were removed before filing the request for the tow hearings. Prompt adjudication of a tow hearing as required by statute avoids excessive charges from accumulating in connection with a tow.

PROBABLE CAUSE FOR REMOVAL OF VEHICLES

The Court further considered the evidence presented at the hearing and finds that Crisoforo Maldonado, Jr., as a responsible third party, was authorized, with probable cause, to order the removal of the four (4) vehicles described as:

1. 1956 Chevrolet Bel Air; VIN# VC56J0036528;
2. 1969 Red Ford Mustang; License No. SSV47S; VIN# 9R02H102192;
3. 2016 Suzuki CLS Motorcycle; License No. 715U3C, VIN # JS1VY53A0G2100043;
4. 1970 Yellow Ford Mustang, Mach 1 with no identifying VIN#.

The Court finds that Crisoforo Maldonado, Jr. possessed an ownership interest in the property described as 8820 E. Rogers Road, Edinburg, Texas, where the vehicles were located on October 23, 2018. Crisoforo Maldonado, Sr. died on June 17, 2018. The Court finds that Crisoforo Maldonado, Jr. is the son of Crisoforo Maldonado, Sr. and an heir at law based on a filing in P-39142, *In Re Crisoforo Maldonado, Sr.*, which is an application to determine heirship in the Probate Court of Hidalgo County, Texas. The Court finds that Crisoforo Maldonado, Sr. died intestate. The Court further finds that pursuant to Estates Code Section 101.001(b), the estate of a person who dies intestate vests immediately in the person's heirs at law. Crisoforo Maldonado, Jr. became an heir at law upon the death of his father on June 17, 2018 and became vested as an owner of the property described as 8820 E. Rogers Road, Edinburg, Texas. Thereafter, on October 23, 2018, Crisoforo Maldonado, Jr., with probable cause and as an owner,

authorized the removal of the vehicles described above from the property. M & M Towing acted in response to a request by Crisoforo Maldonado, Jr. and this action to remove the four vehicles on October 23, 2018 was reasonable and based on probable cause due to the presentation of Crisoforo Maldonado, Jr. of a valid Texas Driver's license showing his residence to be 8820 E. Rogers Road, Edinburg, Texas 78541, signage at the entrance to the property indicating the private entrance was owned or controlled by "Maldonado" and a street sign at the entrance to the property designating the private drive as "C. Maldonado Drive". M & M Towing was presented with facts or circumstances which would indicate to a person of ordinary prudence that Crisoforo Maldonado, Jr. had authority to order the removal of the four vehicles from the property at 8820 E. Rogers Road, Edinburg, Texas 78541.

The Court further finds that on October 23, 2018, Davila did not possess an ownership interest in the property where the vehicles were located.

M & M Towing is a properly licensed towing and vehicle storage facility under license TDLR 0648655VSF in the State of Texas and M & M Towing responded to the request of Crisoforo Maldonado, Jr. when it towed the four vehicles described above to its vehicle storage facility in Edinburg, Texas.

The Court further finds that M & M Towing did not authorize the removal of the four vehicles and M & M Towing cannot, as a matter of law, be liable for payment of the costs of removal and storage of the four vehicles.

The Court finds that towing and storage fees charged by M & M Towing are authorized by law and finds that the following charges for towing and storage fees over the course of 464 days between October 23, 2018 and January 29, 2020, are reasonable, just and allowed by law:

1. 1956 Chevrolet Bel Air; VIN# VC56J0036528: **\$10,505.60;**

2. 1969 Red Ford Mustang; License No. SSV47S; VIN# 9R02H102192: **\$10,505.60;**
3. 2016 Suzuki CLS Motorcycle; License No. 715U3C, VIN # JS1VY53A0G2100043: **\$10,410.60;**
4. 1970 Yellow Ford Mustang, Mach 1 with no identifying VIN#: **\$10,405.60.**

The Court finds that M & M Towing possesses a valid vehicle storage facility lien on each of the four vehicles described herein and has the right to foreclose on its liens as permitted by law.

The Court finds that because M & M Towing and Recovery, Inc. did not authorize the removal of the four vehicles, and because Crisoforo Maldonado, Jr. as a Responsible Third Party authorized the removal of the four vehicles with probable cause, Davila, as the person who requested the hearing shall pay the costs of removal and storage as required by V.T.C.A. Section 2308.451(a). The Court further finds that pursuant to V.T.C.A. Section 2308.451(b), because M & M Towing did not authorize the removal of the four vehicles, M & M Towing is not liable for payment of costs of removal and storage. The Court finds that M & M Towing is a prevailing party and pursuant to V.T.C.A., Occupations Code Section 2308.458(e)(a), the Court finds that an award of attorney's fees and court costs is proper to compensate M & M Towing for legal services and costs associated in defending against the claims of Ricardo Davila.

Davila is liable to M & M Towing for all costs of court and for reasonable and necessary services of the attorney employed by M & M Towing and the Court adjudges Davila liable for the following:

- (a) For representation in the trial court.
~~\$ 22,590.00~~ **\$0**
- (b) For representation through appeal to the court of appeals.

\$ 10,000.00

- (c) For representation at the petition for review stage in the Supreme Court of Texas.

\$ 7,500.00

- (d) For representation at the merits briefing stage in the Supreme Court of Texas and representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

\$ 5,000.00

Court costs are assessed against Appellant Ricardo Davila.

All further relief not expressly granted is denied.

Entered this 12th day of ~~January~~ ^{February}, 2020.


Presiding Judge

Received from the Court
2/12/2020 11:13 AM

On _____

SEF

Initials: _____

CL-19-5371-D

RICARDO MALDONADO DAVILA	§	IN THE COUNTY COURT
	§	
	§	
VS.	§	AT LAW NO. 4
	§	
M & M TOWING AND RECOVERY,	§	
INC.,	§	HIDALGO COUNTY, TEXAS

**RICARDO MALDONADO DAVILA'S OBJECTIONS AND ANSWERS TO
M&M TOWING AND RECOVERY, INC. FIRST REQUEST FOR ADMISSIONS**

TO: Defendant, **M&M TOWING AND RECOVERY, INC.**
By and through its counsel of record:

John David Franz
Law Office of John David Franz
400 N. McColl, Suite B
McAllen, Texas 78501
(956) 686-3300
(956) 686-3578 (Fax)

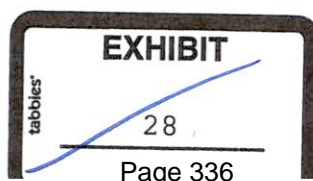
COMES NOW, RICARDO MALDONADO DAVILA, Appellant, and files this his Objections and
Answers to M & M Towing & Recovery Inc's First Request for Admissions.

Respectfully submitted,

ACEVEDO LAW FIRM

5717 N. 10th St, Suite D
McAllen, Texas 78504
Telephone: (956) 215-8888
Telecopier: (866) 427-1643

By: /s/ Raul A. Acevedo, Jr.
Raul A. Acevedo, Jr.
State Bar No. 24088855
ATTORNEY FOR APPELLANT



CERTIFICATE OF SERVICE:

This is to certify that the original document was served upon the following, on the 5th day of December 2019, in accordance with the Texas Rules of Civil Procedure:

Via email and Fax:

John David Franz

Law Office of John David Franz

400 N. McColl, Suite B

McAllen, Texas 78501

(956) 686-3300

(956) 686-3578 (Fax)

ATTORNEYS FOR APPELLEE

/s/ Raul A. Acevedo, Jr._____

Raul A. Acevedo, Jr.

FIRST REQUESTS FOR ADMISSION TO RICARDO MALDONADO DAVILA

OBJECTION TO THESE REQUESTS FOR ADMISSION:

“An appeal from a hearing under this chapter is governed by the rules of procedure applicable to civil cases in justice court, except that no appeal bond may be required by the court.” Tex. Occ. Code § 2308.459. Justice court rules of procedure require that a party to motion the court for discovery. *See Torres v. Cont'l Apartments*, No. 05-18-00215-CV, 2019 Tex. App. LEXIS 4158, at *11 (Tex. App.—Dallas May 21, 2019). Appellee has not done so at this point. Any answers and/or objections by Appellant to these Requests for Admissions are precautionary and are designed to preserve Appellant’s objections. Any answers and/or objections by Appellant are not admissible at final hearing.

Appellant incorporates “OBJECTION TO THESE REQUESTS FOR ADMISSION” by reference into every RESPONSE for Admission below. Also, any answers provided below are Subject to and without waving said “OBJECTION TO THESE REQUESTS FOR ADMISSION” and any other additional objection asserted by Appellant.

1. Admit that you reported to the Texas Department of Motor Vehicles that your mailing address was RT 1 Box 339 C, Edinburg, Texas 78539.

RESPONSE:

Admit

2. Admit that after you changed your mailing address, you failed to report a change of address to the Texas Department of Motor Vehicles.

RESPONSE:

Objection: Appellant objects to this Request as it lacks specificity and/or is so vague and unclear that the Appellant cannot identify the information requested. Specifically, the term ‘after your changed your mailing address’ is not sufficiently defined in time and place. Further, Appellant did not change mailing address.

3. Admit that during October and November 2018 you received mail at RT 1 Box 339 C, Edinburg, Texas 78539.

RESPONSE:

Admit

4. Admit you reported the four vehicles stolen to the Hidalgo County Sheriffs Office on or about October 23, 2018.

RESPONSE:

Admit

5. Admit that Crisoforo Maldonado, Jr. ordered the removal of the motor vehicles from the property located at 8820 Rogers Road, Edinburg, Texas.

RESPONSE:

Admit

6. Admit that as of October 23, 2018 you were aware that the motor vehicles were in the possession of M & M Towing and Recovery, Inc. located at 1406 S. McColl, Edinburg, Texas.

RESPONSE:

Admit

7. Admit that your mother, Aleida Davila, informed you on October 23, 2018 that M & M Towing was refusing to release the motor vehicles unless proof of ownership and payment was made for towing and storage charges, if any.

RESPONSE:

Objection:

Appellant objects that the request for admission is compound.

Subject to and without waving said objection: Deny.

8. Admit that you were made aware on October 23, 2018 that M & M Towing was refusing to release the motor vehicles unless proof of ownership and payment was made for towing and storage charges.

RESPONSE:

Objection:

Appellant objects that the request for admission is compound

Subject to and without waving said objection: Deny.

9. Admit that you were aware as of October 23, 2018 that storage charges would be added to towing charges at the rate of \$20.00 per day for each day each of the motor vehicles was stored at M & M Towing and Recovery, Inc.

RESPONSE:

Deny

10. Admit you were made aware during October of 2018 that Crisoforo Maldonado had ordered

the removal of the motor vehicles from the Rogers Road property.

RESPONSE:

Admit

11. Admit that during October of 2018 and thereafter Crisoforo Maldonado has represented himself to be the person in charge of the Rogers Road property.

RESPONSE:

Objection: Appellant objects to this Request as it lacks specificity and/or is so vague and unclear that the Appellant cannot identify the information requested. Specifically, the term 'in charge' is not sufficiently defined. Also 'the term 'Crisoforo Maldonado' is not sufficiently defined as there are two individuals with that name, Appellant's Grandfather and Uncle.

12. Admit that you have no ownership interest in the Rogers Road property.

RESPONSE:

Admit

13. Admit that you did not pay for storage of the motor vehicles on the Rogers Road property during 2018.

RESPONSE:

Admit

14. Admit that prior to October 23, 2018, Crisoforo Maldonado, Jr. had demanded that you remove the vehicles from the Rogers Road property.

RESPONSE:

Deny

15. Admit that you do not possess a file stamped justice of the peace court document proving that you delivered a written request for a tow hearing within fourteen days of the date the motor vehicles were removed from the Rogers Road property and stored at M & M Towing.

RESPONSE:

Admit

16. Admit that the conduct of Crisoforo Maldonado was a proximate cause of the motor vehicle's

being moved by M & M Towing from the Rogers Road property to M & M Towing.

RESPONSE:

Objection: Appellant objects to this Request as it lacks specificity and/or is so vague and unclear that the Appellant cannot identify the information requested. Specifically, the term 'Crisoforo Maldonado' is not sufficiently defined as there are two individuals with that name, Appellant's Grandfather and Uncle.

17. Admit the removal of the motor vehicles that makes the basis of this action was not a theft on the part of M & M Towing.

RESPONSE:

Deny

18. Admit that you have no evidence that M & M Towing was aware of facts proving that Crisoforo Maldonado, Jr. had no authority to order removal of the motor vehicles from the property.

RESPONSE:

Deny

19. Admit that since the death of Crisoforo Maldonado, Sr., Crisoforo Maldonado, Jr. has acted as if he is the person in charge of the Rogers Road property.

RESPONSE:

Objection: Appellant objects to this Request as it lacks specificity and/or is so vague and unclear that the Appellant cannot identify the information requested. Specifically, the term 'in charge' is not sufficiently defined.

20. Admit that you have no evidence to prove that M & M Towing was aware that Crisoforo Maldonado, Jr. had no authority to order removal of the motor vehicles.

RESPONSE:

Deny

21. Admit that signage on the Rogers Road property includes a street sign showing "C Maldonado Dr."

RESPONSE:

Admit

22. Admit that you had no court ordered authority to store vehicles on the Rogers Road property on October 23, 2018.

RESPONSE:

Admit

23. Admit that you have no evidence that in removing the motor vehicles, M & M Towing was motivated by grounds or beliefs that were not reasonable.

RESPONSE:

Deny

24. Admit that you have no evidence that in removing the motor vehicles, M & M Towing was not acting in good faith to the requests of Crisoforo Maldonado, Jr.

RESPONSE:

Admit

25. Admit that you did not appear at a hearing on October 25, 2019 in the Justice of the Peace Court for Precinct 2, Place 1 in Pharr, Texas.

RESPONSE:

Objection: Appellant objects to this Request as being outside the scope of discovery. Specifically, this request asks for information that is not relevant and that will not lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a).

26. Admit that in each of the cases involving the four motor vehicles, the Justice of the Peace for Precinct 2, Place 1 in Hidalgo County rendered judgements in favor of M & M Towing and against you.

RESPONSE:

Objection: Appellant objects to this Request as being outside the scope of discovery. Specifically, this request asks for information that is not relevant and that will not lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a).

27. Admit that you are aware that the prevailing party in a tow hearing case is entitled to recover court costs and attorney's fees.

RESPONSE:

Objection: Appellant objects to this Request as being outside the scope of discovery. Specifically, this request asks for information that is not relevant and that will not lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a).

28. Admit that you are aware that for each case where M & M Towing is adjudicated the prevailing party in a tow hearing case, **M & M Towing** is entitled to recover court costs and attorney's fees from you.

RESPONSE:

Objection: Appellant objects to this Request as being outside the scope of discovery. Specifically, this request asks for information that is not relevant and that will not lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a).

29. Admit that \$300 per hour is a reasonable rate for an attorney with 35 years of experience to charge for services in a case like the case you have filed in this Court.

RESPONSE:

Objection: Appellant is not an expert in Attorney's fees and cannot opine regarding the reasonable rate for an attorney.

30. Admit that on October 23, 2018, you were not the registered owner of a 1972 Ford Mustang that was removed from the Rogers Road property.

RESPONSE: Deny

31. Admit that on October 23, 2018, you were not the operator of a 1972 Ford Mustang that was removed from the Rogers Road property.

RESPONSE:

Admit

32. Admit that on October 23, 2018, the 1972 Ford Mustang that was removed from the Rogers Road property was not in an operable condition.

RESPONSE:

Admit

33. Admit that on at the time you filed court proceedings against M & M Towing related to the removal of motor vehicles from the Rogers Road property, you were not the registered owner of the 1972 Ford Mustang that was removed from the Rogers Road property.

RESPONSE:

Deny

34. Admit that on October 23, 2018, you were not the registered owner of a 2016 Suzuki

Motorcycle that was removed from the Rogers Road property.

RESPONSE:

35. Admit that on at the time you filed court proceedings against M & M Towing related to the removal of motor vehicles from the Rogers Road property, you were not the registered owner of the 2016 Suzuki Motorcycle that was removed from the Rogers Road property.

RESPONSE: Admit

36. Admit that the 2016 Suzuki Motorcycle was financed by a lender based on representations by Arleth J. Fuentes that she would be making the payments on the vehicle,

RESPONSE:

37. Admit that the lienholder on the 2016 Suzuki Motorcycle was not aware that anyone other than Arleth J. Fuentes was making the monthly payments on the note secured by the motorcycle.

RESPONSE:

Despite a reasonable inquiry, the information known or easily obtainable is insufficient to enable an admission or denial.

38. Admit that prior to October 23, 2018, you were aware that false statements made to a finance company or lender were criminal acts.

RESPONSE:

Objection: Appellant objects to this Request as being outside the scope of discovery. Specifically, this request asks for information that is not relevant and that will not lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a). Further Appellant objects that the request for admission is compound.

Subject to and without waving said objection: Deny.

39. Admit that you and Arleth Fuentes engaged in conduct which included false representations to the entity (Synchrony Bank) that agreed to finance the purchase of the 2016 Suzuki.

RESPONSE:

Objection: Appellant objects to this Request as being outside the scope of discovery. Specifically, this request asks for information that is not relevant and that will not lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a). Further Appellant objects that the request for admission is compound.

Subject to and without waving said objection: Deny.

40. Admit that Arleth Fuentes engaged in conduct which included false representations to the entity (Synchrony Bank) that agreed to finance the purchase of the 2016 Suzuki.

RESPONSE:

Objection: Appellant objects to this Request as being outside the scope of discovery. Specifically, this request asks for information that is not relevant and that will not lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a).

Subject to and without waving said objection: Deny.

41. Admit that as of the filing of your lawsuit, you have not objected to the amount of towing and storage charges on each of the motor vehicles.

RESPONSE:

Deny

42. Admit that you have no evidence to defeat the statutory lien pursuant to V.T.C.A., Property Code §70.003 claimed by M&M Towing for providing towing and storage services in connection with the motor vehicles ordered by Crisoforo Maldonado to be removed from the Rogers Road property on October 23, 2018.

RESPONSE:

Deny

43. Admit that you have no evidence that M&M Towing is vicariously liable for the conduct of Crisoforo Maldonado, Jr.

RESPONSE:

Deny

44. Admit that on October 23, 2018 you resided at 1002 Lexington Circle, Apartment 2, Edinburg, Texas 78539.

RESPONSE:

Deny

45. Admit that on October 23, 2018 you did not reside at Rt. 1 Box 339 C, Edinburg, Texas 78539.

RESPONSE:

Deny

46. Admit that on October 23, 2018 you were not receiving mail at Rt. 1 Box 339 C, Edinburg, Texas 78539.

RESPONSE:

Deny

47. Admit that you never listed 8820 Rogers Road, Edinburg, Texas 78539 as your address with any government authority.

RESPONSE:

Deny

48. Admit that you never used 8820 Rogers Road, Edinburg, Texas 78539 as your address for purposes of voter registration in Hidalgo County.

RESPONSE:

Deny

49. Admit that you filed a document with a court which contained a false statement regarding your grandfather's will being probated.

RESPONSE:

Deny

50. Admit that your grandfather, Crisoforo Maldonado, Sr. died without leaving a will.

RESPONSE:

Admit

51. Admit that you filed a false statement with the Texas Department of Motor Vehicles when you represented that you paid \$125.00 for the 1956 Chevrolet involved in this suit.

RESPONSE:

52. Admit that you paid \$125.00 for the 1956 Chevrolet involved in this suit.

RESPONSE:

Objection: Appellant objects to this Request as being outside the scope of discovery. Specifically, this request asks for information that is not relevant and that will not lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a).

53. Admit that you filed a false statement with the Texas Department of Motor Vehicles when you represented that you paid \$600.00 for the 1969 Mustang involved in this suit.

RESPONSE:

Objection: Appellant objects to this Request as being outside the scope of discovery. Specifically, this request asks for information that is not relevant and that will not lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a).

Subject to and without waving said objection: Deny.

54. Admit that you paid \$600.00 for the 1969 Mustang involved in this suit.

RESPONSE:

Objection: Appellant objects to this Request as being outside the scope of discovery. Specifically, this request asks for information that is not relevant and that will not lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a).

Subject to and without waving said objection: Deny.

55. Admit that you are not listed as a lien holder or owner of the 2016 Suzuki Motorcycle involved in this suit on records kept by the Texas Department of Motor Vehicles.

RESPONSE:

Admit

56. Admit that you have no proof that you own the Mustang that has no identifiable Vehicle Identification Number and which was removed from the Rogers Property by M & M Towing.

RESPONSE:

Deny

57. Admit that M & M Towing did not authorize the removal of the four vehicles from the Rogers Road property.

RESPONSE:

Deny

58. Admit that you have not notified lien holders that any of the motor vehicles

removed from the Rogers Road property are not in your possession and are being stored at M & M Towing.

RESPONSE:

Deny

59. Admit that neither you or Arleth Fuentes has notified any lienholder that the 2016 Suzuki is no longer in her possession and is being stored at M & M Towing.

RESPONSE:

Objection: Appellant objects that the request for admission is compound. Subject to said objection: Deny

60. Admit that more than 10 months elapsed from the time the motor vehicles were removed before you obtained court hearing dates on your applications for tow hearings on each of the motor vehicles removed from the Rogers Road property.

RESPONSE:

Admit

61. Admit that the purpose of conducting a timely tow hearing is to resolve probable cause issues quickly and determine whether probable cause exists so that storage fees do not increase.

RESPONSE:

Admit

62. Admit that you could have paid the towing and storage charges on the motor vehicles in October of 2018 and could have filed applications for tow hearings to get reimbursed for the towing and storage costs if there was no probable cause for the party authorizing the removal to do so.

RESPONSE:

Objection: Appellant objects that the request for admission is compound. Subject to said objection: Deny

63. Admit that you did not attempt to file an application for a tow hearing in any of the cases of the motor vehicles with the Justice Court of Precinct 4, Place 2.

RESPONSE:

Deny

64. Admit that M & M Towing acted reasonably and in good faith when it removed the motor vehicles from the Rogers Road property at the request of

Crisoforo Maldonado, Jr.

RESPONSE:

Objection: Appellant objects that the request for admission is compound. Subject to said objection: Deny

65. Admit that M & M Towing performed labor and services in the form of the towing of three vehicles which were inoperable at the time and for which keys were not available.

RESPONSE:

Deny

66. Admit that M & M Towing performed labor and services in the form of towing of a large Suzuki motorcycle without the benefit of keys to move the vehicle.

RESPONSE:

Deny

67. Admit that M & M Towing has stored and maintained possession of three motor vehicles which were removed from the Rogers Road property since October 23, 2018

RESPONSE:

Admit

68. Admit that M & M Towing has stored and maintained possession of a 2016 Suzuki Motorcycle which was removed from the Rogers Road property since October 23, 2018

RESPONSE:

Admit

69. Admit you were made aware in October of 2018 that M & M Towing was storing the 2016 Suzuki Motorcycle which was removed from the Rogers Road property and charging \$20.00 per day for each day it remained in the possession of M & M Towing.

RESPONSE:

Objection: Appellant objects that the request for admission is compound. Subject to and without waving said objection: Deny

70. Admit you were made aware in October of 2018 that M & M Towing was storing the three motor vehicles (1969 Mustang, 1956 Chevrolet, 1972 Mustang with no VIN) which were removed from the Rogers Road property and charging \$20.00 per day for each vehicle for each day each vehicle remained in the possession of M & M Towing.

RESPONSE:

Objection: Appellant objects that the request for admission is compound. Subject to and without waving said objection: Deny

71. Admit that Ricardo Davila's responses herein are truthful.

RESPONSE:

Admit

RICARDO MALDONADO DAVILA	§	IN THE COUNTY COURT
	§	
	§	
VS.	§	AT LAW NO. 4
	§	
M & M TOWING AND RECOVERY,	§	
INC.	§	HIDALGO COUNTY, TEXAS

AFFIDAVIT OF JOHN DAVID FRANZ

BEFORE ME, the undersigned authority, on this day personally appeared John David Franz, a person known to me to be the person whose name is subscribed below, who after being duly sworn, deposes and says:

1. My name is John David Franz. I am over the age of eighteen (18) years. I have never been convicted of a felony or a crime involving moral turpitude, am under no disabilities am competent and qualified to make this affidavit. Each of the statements in this affidavit is within my personal knowledge and is true and correct.
2. I am duly licensed to practice law in the state of Texas and am a member of the Bar of this Court. I am the principal shareholder of the firm Law Office of John David Franz in McAllen, Texas. I am the lead attorney in the case representing M & M Towing and Recovery, Inc. ("M & M Towing") in the above styled cause. I submit this affidavit in support of M & M Towing's request for reasonable attorneys' fees and costs in responding to Appellants claims in the Justice of the Peace Court and the pending case in this court.
3. I hold degrees from Pan American University where I obtained a Bachelor of Arts Degree with honors in 1981 and a J.D. from the University of Texas School of Law in Austin in 1984. After completing law school, I served as a judicial clerk to United States District Judge Ricardo H. Hinojosa for one year. I was Board Certified by the Texas Board of Legal Specialization in Personal Injury Trial Law in 1989 and have been Board Certified since that time. I am admitted to practice law before the United States District Courts for the Southern and Western Districts of Texas. I have more than thirty-five years of experience in general civil litigation and have represented hundreds of companies and individuals in a wide range of cases, including cases involving tow companies and vehicle storage facilities licensed by the State of Texas.
4. As lead attorney in this case, I am personally familiar with the legal services provided to M & M Towing in this matter. These services were performed by me. The nature of these services are fully and fairly described in the contemporaneous time records kept by my firm in connection with this matter and in the periodic bills for those services that have been sent or will be sent to M & M Towing.
5. My standard rate is \$300.00 per hour. I have been the lead attorney in several cases in the Rio Grande Valley. Because of my experience as a practicing attorney in Texas, I am



familiar with the usual and customary rates charged by other attorneys at law firms in the Rio Grande Valley for similar work. The hourly rates charged by my firm for my services are well within the range of these customary rates.

6. I provided general legal advice, drafting and legal research in this case.
7. In performing legal services in this matter since its inception and through the appeal of the Justice Court's judgment, the total time and amount of fees billed or that will be billed is as follows:


Attorney	Hours	Fees
John David Franz	75.3	\$ 22,590.00
TOTAL		\$ 22,590.00

8. I have calculated the amount of fees incurred by factoring and considering only the time worked that relates to this matter.
9. A number of legal services were performed on M & M Towing's behalf and these legal services include, for example: (1) performing legal research on Texas statutes related to nonconsent tows and vehicle recovery; (2) drafting pleadings and motions; (3) preparing and filing a Motion to Dismiss; (4) preparing and filing a Motion to Designate Responsible Third Party; (5) performing legal research on probable cause in tow case; (6) meeting with my client; (6) meeting with witnesses; (7) drafting affidavits and calculating towing and storage charges; (8) attending court hearings; and (5) communicating with my client.
10. The Itemized Statement of Fees, attached as **Exhibit A** hereto, is a detailed chronological breakdown of the legal services provided and the time spent in connection with the justice of the peace court action and this appeal. The information in Exhibit A was taken from the contemporaneous time records kept in the usual course of business by my firm. The Statements are current as of January 28, 2020. Because the Statement does not go beyond January 28, 2020, it does not include time devoted to the trial of this case. I estimate that I will spend another 10 hours or \$3,000 responding on the trial of this case set for January 29, 2020 and preparing for post-trial motions and entry of judgment.
11. As shown in **Exhibit A**, M & M Towing incurred \$22,590.00 in attorneys' fees for legal work performed by my firm from September 1, 2019 in challenging the Appellant's claims through the trial of this cause on January 29, 2020.
12. When reviewing the time records, I considered all of the factors for determining the reasonableness of fees as outlined by the Texas Supreme Court in *Arthur Anderson & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812 (Tex. 1997), as well as those similar factors laid out by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *overruled on other grounds by, Blanchard V. Bergeron*, 489 U.S. 87 (1989)). These factors include: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly; (2) the likelihood that it will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the

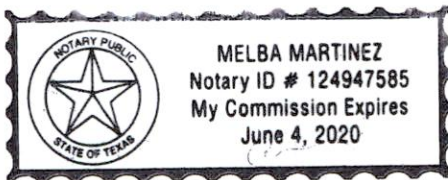
nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the legal services; and (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services are rendered.

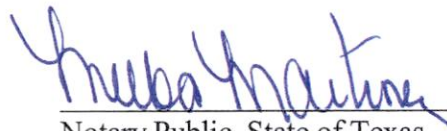
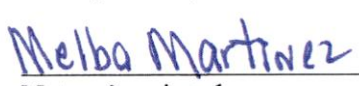
13. In my opinion, after reviewing the billing records and considering all of the relevant factors, all of the services performed and detailed in **Exhibit A** were reasonable and necessary to litigate this matter.
14. M & M Towing is also entitled to recover all costs associated with this matter, in the total amount sought of \$500.00. These costs comprise the costs of two subpoenas, service and issuance fees.
15. In my opinion, the attorneys' fees and costs for services requested herein, totaling \$23,090.00, were reasonably and necessarily expended, and are reasonable in amount.
16. In my opinion, an amount of \$10,000 for legal services will be required for legal representation of M & M Towing in the event of an appeal to the Thirteenth Circuit Court of Appeals and that a reasonable fee for that service is \$10,000.00.
17. In my opinion, an amount of \$7,500 for legal services will be required for legal representation of M & M Towing for representation in the event of making or responding to an application for writ of error to the Texas Supreme Court and that a reasonable fee for that service is \$7,500.00.
18. In my opinion, \$5,000 in legal services will be required for the representation of M & M Towing if an application for writ of error is granted by the Texas Supreme Court and that a reasonable fee for that service is \$5,000.00.

FURTHER AFFIANT SAYETH NOT.


John David Franz

SWORN TO AND SUBSCRIBED before me on this 28th day of January, 2020 by John David Franz.




Notary Public, State of Texas

Notary's printed name
Notary's Commission Expires: 6-4-2020

M & M Towing & Recovery

1406 S. McColl Rd.

Edinburg, Texas 78539

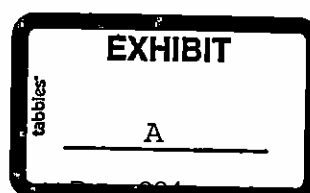
Our File 7355-2

Fees:

75.30 hours @ \$300

\$22,590

(as of 1/29/2020)



Law Offices of John David Franz

400 N McColl Rd Suite B

McAllen, TX 78504 US

666-686-3300

Invoice**BILL TO**

7355-2 (1034) M & M Towing &

Recovery

1406 S. McColl Rd

Edinburg, TX 78539

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
5510	01/28/2020	\$14,160.00	02/27/2020	Net 30	

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
01/21/2020	JDFT	Trial Preparation, review of probate documents in Maldonado probate case	1	300.00	300.00
01/21/2020	JDFT	Research on probable cause	2	300.00	600.00
01/21/2020	JDFT	Summary of Evidence Exhibit, creation of notebooks for use at trial,	3	300.00	900.00
01/21/2020	JDFT	Meeting with Valentin Cardenas to discuss case	0.50	300.00	150.00
01/21/2020	JDFT	Meeting with Marlen regarding exhibits to be used	0.50	300.00	150.00
01/21/2020	JDFT	Legal research on probable cause, Akin v Dahl, BFI v. Zavaletta, memo on probable cause	4	300.00	1,200.00
01/21/2020	JDFT	Draft Judgment in Tow Hearing	2	300.00	600.00
01/22/2020	JDFT	Download of photos sent by client, review of same	0.80	300.00	240.00
01/22/2020	JDFT	Continue with creation of Exhibit folder with inclusion of TDLR licenses	0.30	300.00	90.00
01/22/2020	JDFT	Review of Third Party Responsibility and draft of new order	1.50	300.00	450.00
01/22/2020	JDFT	Research on statutes related to liens and releases of vehicles	2	300.00	600.00
01/23/2020	JDFT	Meeting with Valentin Cardenas to discuss recollection of date of removal	1	300.00	300.00
01/24/2020	JDFT	Legal Research on Heirs at Law and vesting of ownership upon death of intestate	2	300.00	600.00
01/24/2020	JDFT	Legal research on rights of co owners of property	1.50	300.00	450.00

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
01/24/2020	JDFT	Continue with legal research on private nuisance and Estates Code	2	300.00	600.00
01/24/2020	JDFT	Commence draft of Bench Trial Memorandum regarding issues to be faced by Court	4	300.00	1,200.00
01/27/2020	JDFT	Draft Subpoena to C. Maldonado, Jr., contact process server	0.80	300.00	240.00
01/27/2020	JDFT	Contact Process Server to serve subpoena	0.30	300.00	90.00
01/28/2020	JDFT	Final Pre Trial Preparation, Continue with preparation of Exhibits and Notebooks for Court, work on Presentation of Evidence, Meeting with Client	10	300.00	3,000.00
01/29/2020	JDFT	Trial, Defense of Allegations, Presentation of claims	8	300.00	2,400.00

BALANCE DUE

\$14,160.00

Law Offices of John David Franz

400 N McColl Rd Suite B

McAllen, TX 78504 US

666-686-3300

Invoice**BILL TO**

7355-2 (1034) M & M Towing &

Recovery

1406 S. McColl Rd

Edinburg, TX 78539

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
5494	12/31/2019	\$479.50	01/30/2020	Net 30	

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
12/06/2019	FAX2	Incoming Fax from Raul Acevedo	9	1.00	9.00
12/07/2019	FAX2	Incoming Fax from Raul Acevedo	14	1.00	14.00
12/09/2019	JDFT	Review of Davila's responses to Request for Admission	0.50	300.00	150.00
12/09/2019	JDFT	Review Davila's responses to Interrogatories	0.50	300.00	150.00
12/09/2019	JDFT	Review Davila's responses to Requests for Production	0.50	300.00	150.00
12/31/2019	COPY	Copies	26	0.25	6.50

BALANCE DUE

\$479.50

Law Offices of John David Franz

400 N McColl Rd Suite B

McAllen, TX 78504 US

6-686-3300

Invoice**BILL TO**7355-2 (1034) M & M Towing &
Recovery1406 S. McColl Rd
Edinburg, TX 78539

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
5479	11/30/2019	\$8,474.08	12/30/2019	Net 30	

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
11/01/2019	JDFT	Drafting Answers, Counterclaims in all four cases, filing same	4	300.00	1,200.00
11/01/2019	JDFT	Drafting Motions to Dismiss in all four cases, filing same	4	300.00	1,200.00
11/01/2019	FILING FEE	E-filed Original Answer & Counter Claim CI-19-5373-B - Pd w/JDF MC 3885	1	86.68	86.68
11/01/2019	FILING FEE	E-filed Original Answer & Counter Claim CI-19-5374-E - Pd w/JDF MC 3885	1	86.68	86.68
11/01/2019	FILING FEE	E-filed Original Answer & Counter Claim CI-19-5371-D - Pd w/JDF MC 3885	1	86.68	86.68
11/03/2019	FAX2	Incoming Fax from Raul A Acevedo Jr.	4	1.00	4.00
11/03/2019	FAX2	Incoming Fax from Raul A Acevedo Jr.	25	1.00	25.00
11/04/2019	JDFT	Read, review and analyze Plaintiff's Response to Motion to Dismiss	1	300.00	300.00
11/04/2019	JDFT	Read and review of Application for Tow Hearing and Answer to Counterclaim with three exhibits	1.20	300.00	360.00
11/04/2019	JDFT	Travel to and attendance at hearing in CC5 on Status Conference, agreement to consolidate four cases in CC4, return to office	3	300.00	900.00
11/04/2019	JDFT	Meeting with V. Cardenas to request information and inform of status	0.40	300.00	120.00
11/04/2019	JDFT	Commence draft of Amended Answer and Counterclaim to be filed in CC 4	2.40	300.00	720.00
11/04/2019	JDFT	Read and review Plaintiff's Motion to Consolidate and Agreed Order Consolidating cases	0.40	300.00	120.00

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
11/04/2019	FILING FEE	E-filed Original Answer & Counter Claim CI-19-5375-B - Pd w/JDF MC 3885	1	86.68	86.68
11/04/2019	FILING FEE	E-filed Motion to Dismiss Applications for Tow Hearings - CL-19-5375-B Pd w/JDF MC 3885	1	3.34	3.34
11/05/2019	JDFT	Draft Interrogatories to Plaintiff	1	300.00	300.00
11/05/2019	JDFT	Draft Requests for Disclosure to Plaintiff	0.80	300.00	240.00
11/05/2019	JDFT	Draft Requests for Production to Plaintiff	1.40	300.00	420.00
11/05/2019	JDFT	Draft Requests for Admission to Plaintiff	2.30	300.00	690.00
11/05/2019	JDFT	Research towing cases and case law on Chapter 2308	3	300.00	900.00
11/05/2019	FILING FEE	E-filed 1st Amended Original Answer & Counter Claim - CL-19-5371-D - Pd w/JDF MC 3885	1	86.68	86.68
11/05/2019	FILING FEE	E-filed Motion to Designate Responsible Third Party & Order Granting Leave - CL-19-5371-D - Pd w/JDF MC 3885	1	3.34	3.34
11/06/2019	JDFT	Finalize and review discovery requests to Plaintiff, filing same	1.30	300.00	390.00
11/15/2019	JDFT	Review of Agreed Motion to Consolidate and Orders	0.40	300.00	120.00
11/30/2019	COPY	Copies	34	0.25	8.50
11/30/2019	COPY	Copies in color	33	0.50	16.50

BALANCE DUE

\$8,474.08

Law Offices of John David Franz

400 N McColl Rd Suite B

McAllen, TX 78504 US

361-686-3300

Invoice**BILL TO**

7355-2 (1034) M & M Towing &

Recovery

1406 S. McColl Rd

Edinburg, TX 78539

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
5478	10/31/2019	\$31.27	11/30/2019	Net 30	

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
10/31/2019	FILING FEE	E-filed Mtn to Dismiss Applications for Tow Hearings CL-19-5371-D Pd w/JDF MC 3885	1	3.34	3.34
10/31/2019	FILING FEE	E-filed Mtn to Dismiss Applications for Tow Hearings CL-19-5374-E Pd w/JDF MC 3885	1	3.34	3.34
10/31/2019	FILING FEE	E-filed Mtn to Dismiss Applications for Tow Hearings CL-19-5373-B Pd w/JDF MC 3885	1	3.34	3.34
10/31/2019	COPY	Copies	35	0.25	8.75
10/31/2019	COPY	Copies in color	25	0.50	12.50

BALANCE DUE

\$31.27

Law Offices of John David Franz

400 N McColl Rd Suite B

McAllen, TX 78504 US

361-686-3300

Invoice**BILL TO**

7355-2 (1034) M & M Towing &

Recovery

1406 S. McColl Rd

Edinburg, TX 78539

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
5463	09/30/2019	\$52.00	10/30/2019	Net 30	

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
09/16/2019	FAX	Outgoing fax to Raul Acevedo 866-427-1643	9	2.00	18.00
09/24/2019	FAX	Outgoing fax to Judge Roberto Contreras 784-3541	3	2.00	6.00
09/30/2019	COPY	Copies	42	0.25	10.50
09/30/2019	COPY	Copies in color	35	0.50	17.50

BALANCE DUE

\$52.00

V.T.C.A., Occupations Code § 2308.452

§ 2308.452. Right of Owner or Operator of Vehicle to Hearing

Effective: September 1, 2009

The owner or operator of a vehicle that has been removed and placed in a vehicle storage facility or booted without the consent of the owner or operator of the vehicle is entitled to a hearing on whether probable cause existed for the removal and placement or booting.

Credits

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, § 30.159(a), eff. Sept. 1, 1997. Renumbered from V.T.C.A., Transportation Code § 685.003 by Acts 2007, 80th Leg., ch. 1046, § 2.07, eff. Sept. 1, 2007. Amended by Acts 2009, 81st Leg., ch. 845, § 23, eff. Sept. 1, 2009.

V.T.C.A., Occupations Code § 2308.456

§ 2308.456. Request for Hearing

Effective: September 1, 2011

(a) Except as provided by Subsections (c) and (c-1), a person entitled to a hearing under this chapter must deliver a written request for the hearing to the court before the 14th day after the date the vehicle was removed and placed in the vehicle storage facility or booted, excluding Saturdays, Sundays, and legal holidays.

(b) A request for a hearing must contain:

- (1) the name, address, and telephone number of the owner or operator of the vehicle;
- (2) the location from which the vehicle was removed or in which the vehicle was booted;
- (3) the date when the vehicle was removed or booted;
- (4) the name, address, and telephone number of the person or law enforcement agency that authorized the removal or booting;
- (5) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;
- (6) the name, address, and telephone number of the towing company that removed the vehicle or of the booting company that installed a boot on the vehicle;

(7) a copy of any receipt or notification that the owner or operator received from the towing company, the booting company, or the vehicle storage facility; and

(8) if the vehicle was removed from or booted in a parking facility:

(A) one or more photographs that show the location and text of any sign posted at the facility restricting parking of vehicles; or

(B) a statement that no sign restricting parking was posted at the parking facility.

(c) If notice was not given under Section 2308.454, the 14-day deadline for requesting a hearing under Subsection (a) does not apply, and the owner or operator of the vehicle may deliver a written request for a hearing at any time.

(c-1) The 14-day period for requesting a hearing under Subsection (a) does not begin until the date on which the towing company or vehicle storage facility provides to the vehicle owner or operator the information necessary for the vehicle owner or operator to complete the material for the request for hearing required under Subsections (b)(2) through (6).

(d) A person who fails to deliver a request in accordance with Subsection (a) waives the right to a hearing.

Credits

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Transportation Code § 685.005 and amended by Acts 1997, 75th Leg., ch. 165, § 30.159(a), eff. Sept. 1, 1997. Renumbered from V.T.C.A., Transportation Code § 685.007 and amended by Acts 2007, 80th Leg., ch. 1046, § 2.07, eff. Sept. 1, 2007. Amended by Acts 2009, 81st Leg., ch. 845, § 27, eff. Sept. 1, 2009; Acts 2009, 81st Leg., ch. 1310, § 18, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 18.008, eff. Sept. 1, 2011.

V.T.C.A., Occupations Code § 2308.458

§ 2308.458. Hearing

Effective: September 1, 2011

(a) A hearing under this chapter shall be held before the 21st calendar day after the date the court receives the request for the hearing.

(b) The court shall notify the person who requested the hearing for a towed vehicle, the parking facility owner or law enforcement agency that authorized the removal of the vehicle, the towing company, and the vehicle storage facility in which the vehicle was placed of the date, time, and place of the hearing in a manner provided by Rule 21a, Texas Rules of Civil Procedure. The notice of the hearing to the towing company and the parking facility owner or law enforcement agency that authorized the removal of the vehicle must include a copy of the request for hearing. Notice to the law enforcement agency that authorized the removal of the vehicle is sufficient as notice to the political subdivision in which the law enforcement agency is located.

(b-1) At a hearing under this section:

(1) the burden of proof is on the person who requested the hearing; and

(2) hearsay evidence is admissible if it is considered otherwise reliable by the justice of the peace.

(b-2) The court shall notify the person who requested the hearing for a booted vehicle, the parking facility in which the vehicle was booted, and the booting company of the date, time, and place of the hearing in a manner provided by Rule 21a, Texas Rules of Civil Procedure. The notice of hearing to the person that authorized the booting of the vehicle must include a copy of the request for hearing.

(c) The issues in a hearing regarding a towed vehicle under this chapter are:

- (1) whether probable cause existed for the removal and placement of the vehicle;
 - (2) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized by the political subdivision under Section 2308.201 or 2308.202;
 - (3) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized under Section 2308.203; or
 - (4) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized under Section 2308.0575.
- (c-1) The issues in a hearing regarding a booted vehicle under this chapter are:
- (1) whether probable cause existed for the booting of the vehicle; and
 - (2) whether a boot removal charge imposed or collected in connection with the removal of the boot from the vehicle was greater than the amount authorized by the political subdivision under Section 2308.2085.
- (d) The court shall make written findings of fact and a conclusion of law.
- (e) The court may award:
- (1) court costs and attorney's fees to the prevailing party;
 - (2) the reasonable cost of photographs submitted under Section 2308.456(b)(8) to a vehicle owner or operator who is the prevailing party;

(3) an amount equal to the amount that the towing charge or booting removal charge and associated parking fees exceeded fees regulated by a political subdivision or authorized by this code or by Chapter 2303; and

(4) reimbursement of fees paid for vehicle towing, storage, or removal of a boot.

Credits

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Transportation Code § 685.007 and amended by Acts 1997, 75th Leg., ch. 165, § 30.159(a), eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1034, § 17, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 737, § 7, eff. Sept. 1, 2005. Renumbered from V.T.C.A., Transportation Code § 685.009 and amended by Acts 2007, 80th Leg., ch. 1046, § 2.07, eff. Sept. 1, 2007. Amended by Acts 2009, 81st Leg., ch. 845, § 28, eff. Sept. 1, 2009; Acts 2009, 81st Leg., ch. 1310, § 19, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., ch. 353(H.B. 3510), § 16, eff. Sept. 1, 2011.

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

John David Franz on behalf of John David Franz
Bar No. 07389200
jdf@johndavidfranz.com
Envelope ID: 46782708
Status as of 10/2/2020 9:52 AM CST

Associated Case Party: Ricardo Maldonado Davila

Name	BarNumber	Email	TimestampSubmitted	Status
Raul ArtemioAcevedo, Jr.		racevedo@acevedo-law.com	10/2/2020 9:44:30 AM	SENT

Associated Case Party: M&M Towing & Recovery, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
John David Franz	7389200	jdf@johndavidfranz.com	10/2/2020 9:44:30 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Melba Martinez		melba@johndavidfranz.com	10/2/2020 9:44:30 AM	SENT